

§ 7.115

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period, the OCR will determine whether the applicant is in compliance with this part and inform the Award Official. This determination will be based on the submissions required by § 7.80 and any other information EPA receives during this time (including complaints) or has on file about the applicant. When the OCR cannot make a determination on the basis of this information, additional information will be requested from the applicant, local government officials, or interested persons or organizations, including aged and handicapped persons or organizations representing such persons. The OCR may also conduct an on-site review only when it has reason to believe discrimination may be occurring in a program or activity which is the subject of the application.

(b) *Voluntary compliance.* If the review indicates noncompliance, an applicant may agree in writing to take the steps the OCR recommends to come into compliance with this part. The OCR must approve the written agreement before any award is made.

(c) *Refusal to comply.* If the applicant refuses to enter into such an agreement, the OCR shall follow the procedure established by paragraph (b) of § 7.130.

[49 FR 1659, Jan. 12, 1984, as amended at 75 FR 31707, June 4, 2010]

§ 7.115 Postaward compliance.

(a) *Periodic review.* The OCR may periodically conduct compliance reviews of any recipient's programs or activities receiving EPA assistance, including the request of data and information, and may conduct on-site reviews when it has reason to believe that discrimination may be occurring in such programs or activities.

(b) *Notice of review.* After selecting a recipient for review or initiating a complaint investigation in accordance with § 7.120, the OCR will inform the recipient of:

(1) The nature of and schedule for review, or investigation; and

(2) Its opportunity, before the determination in paragraph (d) of this section is made, to make a written submission responding to, rebutting, or denying the allegations raised in the review or complaint.

(c) *Postreview notice.* (1) Within 180 calendar days from the start of the compliance review or complaint investigation, the OCR will notify the recipient in writing by certified mail, return receipt requested, of:

(i) Preliminary findings;

(ii) Recommendations, if any, for achieving voluntary compliance; and

(iii) Recipient's right to engage in voluntary compliance negotiations where appropriate.

(2) The OCR will notify the Award Official and the Assistant Attorney General for Civil Rights of the preliminary findings of noncompliance.

(d) *Formal determination of noncompliance.* After receiving the notice of the preliminary finding of noncompliance in paragraph (c) of this section, the recipient may:

(1) Agree to the OCR's recommendations, or

(2) Submit a written response sufficient to demonstrate that the preliminary findings are incorrect, or that compliance may be achieved through steps other than those recommended by OCR.

If the recipient does not take one of these actions within fifty (50) calendar days after receiving this preliminary notice, the OCR shall, within fourteen (14) calendar days, send a formal written determination of noncompliance to the recipient and copies to the Award Official and Assistant Attorney General.

(e) *Voluntary compliance time limits.* The recipient will have ten (10) calendar days from receipt of the formal determination of noncompliance in which to come into voluntary compliance. If the recipient fails to meet this deadline, the OCR must start proceedings under paragraph (b) of § 7.130.

(f) *Form of voluntary compliance agreements.* All agreements to come into voluntary compliance must:

(1) Be in writing;

(2) Set forth the specific steps the recipient has agreed to take, and

(3) Be signed by the Director, OCR or his/her designee and an official with authority to legally bind the recipient.

§ 7.120 Complaint investigations.

The OCR shall promptly investigate all complaints filed under this section

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unless the complainant and the party complained against agree to a delay pending settlement negotiations.

(a) *Who may file a complaint.* A person who believes that he or she or a specific class of persons has been discriminated against in violation of this part may file a complaint. The complaint may be filed by an authorized representative. A complaint alleging employment discrimination must identify at least one individual aggrieved by such discrimination. Complaints solely alleging employment discrimination against an individual on the basis of race, color, national origin, sex or religion shall be processed under the procedures for complaints of employment discrimination filed against recipients of Federal assistance (see 28 CFR part 42, subpart H and 29 CFR part 1691). Complaints of employment discrimination based on age against an individual by recipients of Federal financial assistance are subject to the Age Discrimination in Employment Act of 1967 and should be filed administratively with the Equal Employment Opportunity Commission (see 29 CFR part 1626). Complainants are encouraged but not required to make use of any grievance procedure established under § 7.90 before filing a complaint. Filing a complaint through a grievance procedure does not extend the 180 day calendar requirement of paragraph (b)(2) of this section. .

(b) *Where, when and how to file complaint.* The complainant may file a complaint at any EPA office. The complaint may be referred to the region in which the alleged discriminatory acts occurred.

(1) The complaint must be in writing and it must describe the alleged discriminatory acts which violate this part.

(2) The complaint must be filed within 180 calendar days of the alleged discriminatory acts, unless the OCR waives the time limit for good cause. The filing of a grievance with the recipient does not satisfy the requirement that complaints must be filed within 180 days of the alleged discriminatory acts.

(c) *Notification.* The OCR will notify the complainant and the recipient of

the agency's receipt of the complaint within five (5) calendar days.

(d) *Complaint processing procedures.* After acknowledging receipt of a complaint, the OCR will immediately initiate complaint processing procedures.

(1) *Preliminary investigation.* (i) Within twenty (20) calendar days of acknowledgment of the complaint, the OCR will review the complaint for acceptance, rejection, or referral to the appropriate Federal agency.

(ii) If the complaint is accepted, the OCR will notify the complainant and the Award Official. The OCR will also notify the applicant or recipient complained against of the allegations and give the applicant or recipient opportunity to make a written submission responding to, rebutting, or denying the allegations raised in the complaint.

(iii) The party complained against may send the OCR a response to the notice of complaint within thirty (30) calendar days of receiving it.

(iv) Complaints alleging age discrimination under the Age Discrimination Act of 1975 will be referred to a mediation agency in accordance with § 7.180.

(2) *Informal resolution.* (i) OCR shall attempt to resolve complaints informally whenever possible. When a complaint cannot be resolved informally, OCR shall follow the procedures established by paragraphs (c) through (e) of § 7.115.

(ii) [Reserved]

(e) *Confidentiality.* EPA agrees to keep the complainant's identity confidential except to the extent necessary to carry out the purposes of this part, including the conduct of any investigation, hearing, or judicial proceeding arising thereunder. Ordinarily in complaints of employment discrimination, the name of the complainant will be given to the recipient with the notice of complaint.

(f) [Reserved]

(g) *Dismissal of complaint.* If OCR's investigation reveals no violation of this part, the Director, OCR, will dismiss the complaint and notify the complainant and recipient.

[49 FR 1659, Jan. 12, 1984, as amended at 75 FR 31707, June 4, 2010]